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Colleen Ryan, Supervisor
Document Control
Arizona Corporation Commission
1200 W. Washington
Phoenix, AZ 85007

Re: Docket No. E-01345A-02-0707
In the matter of the Arizona Public Service Company's Financing Application

Dear Ms. Ryan:

Enclosed for filing in the above-captioned proceeding are the original and nineteen (19) copies of the Sempra Energy Resources and Southwestern Power Group, II Reply Brief on APS's Financing Application, which is the subject of the above-referenced proceeding. Also enclosed are two additional copies to be conformed and returned to our office.

Please let me know if you have any questions, and thank you for your assistance.

Sincerely,

Lawrence V. Robertson, Jr.

Lawrence V. Robertson, Jr.

enclosures

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BEFORE THE ARIZONA CORPORATION COMMISSION

MARC SPITZER
CHAIRMAN

JIM IRVIN
COMMISSIONER
WILLIAM A. MUNDELL
COMMISSIONER

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AZ CORP COMMISSION
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JEFF HATCH-MILLER
COMMISSIONER

MIKE GLEASON
COMMISSIONER

IN THE MATTER OF THE APPLICATION OF)
ARIZONA PUBLIC SERVICE COMPANY FOR)
AN ORDER OR ORDERS AUTHORIZING IT TO)
ISSUE, INCUR, OR ASSUME EVIDENCES OF)
LONG-TERM INDEBTEDNESS; TO ACQUIRE A)
FINANCIAL INTEREST OR INTERESTS IN AN)
AFFILIATE OR AFFILIATES; TO LEND MONEY)
TO AN AFFILIATE OR AFFILIATES; AND TO)
GUARANTEE THE OBLIGATIONS OF AN)
AFFILIATE OR AFFILIATES)

DOCKET NO. E-01345A-02-0707

REPLY BRIEF

Pursuant to the schedule established by the Chief Administrative Law Judge, Sempra Energy Resources and Southwestern Power Group II, L.L.C. ("Sempra/ SWPG") hereby submit their Reply Brief in the above-captioned proceeding.

I.

INTRODUCTION

In their Initial Brief, Sempra/SWPG discussed (i) the statutory decision-making standards which are both applicable to and dispositive of the Commission's consideration of and action upon Arizona Public Service Company's ("APS") Application in this proceeding; and (ii) the burden of proof required of APS to support its alternative financing authorization requests. Sempra/SWPG also reviewed the evidentiary record in this proceeding within the framework of those decision making standards, and noted that serious questions exist as to whether APS has satisfactorily discharged its probative burden as to each of those standards. In that regard, it was

1 noted that unless APS has fulfilled the burden of proof required of it as to each of the five (5)
2 decision-making standards prescribed by A.R.S. § 40-301(C), the Commission does not have the
3 authority to approve APS' financing authorization requests. Sempra/SWPG further noted that
4 given the fact that such requests represent a case of first impression for the Commission, and that
5 the Commission Staff's witness had characterized APS' Application as being "rather unique and
6 unusual,"¹ and set "in a very gray area,"² it was imperative that the Commission proceed
7 cautiously and conservatively in evaluating APS' requests and rendering a decision thereon.
8 Finally, Sempra/SWPG urged the Commission to insure that its decision in this proceeding not
9 have the effect, in any conceivable way, of (i) undercutting the Commission's efforts to facilitate
10 the development of a viable competitive wholesale electric market through the Track "B"
11 process, or (ii) positioning the Commission to prejudge the resolution of issues not before it
12 relating to the possible acquisition and rate-basing by APS of Pinnacle West Energy
13 Corporation's ("PWEC") generation assets.
14

15 By means of this reference, Sempra/SWPG incorporate herein by reference the entirety of
16 their Initial Brief as further background for the Commission's analysis. In this Reply Brief,
17 Sempra/SWPG will address certain matters discussed in or relating to Initial Briefs filed by other
18 parties in this proceeding.³
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23

24 ¹ Tr. 1003, lines 4-5.

25 ² Tr. 999, lines 1-2.

26 ³ In a number of respects, other parties supporting APS' requests simply adopted certain premises utilized by
27 APS, or adopted by implication data on which APS relied, as opposed to conducting independent studies of
28 their own. Accordingly, in discussing probative issues, Sempra/SWPG will primarily focus on APS'
presentation and arguments.

II.

NATURE AND ORIGIN OF "LIQUIDITY CRISIS" APS SEEKS TO AVERT

Through its financing authorization requests, APS states it seeks to avert a "liquidity crisis" that otherwise "threatens its [parent's] continued financial integrity." [APS Initial Brief, page 1, lines 20-21] Despite its protestations to the contrary, in actuality APS in large measure attributes the origins of this crisis to the Commission's issuance of Decision No. 65154 in the Track "A" proceedings;⁴ and it suggests that only by approval of APS' financing authorization requests can the Commission begin⁵ to redress the impending financial disaster APS endeavors to portray. Omitted from this drama are two very important events, which must be taken into account in any examination of the merits of APS' proposal.

The first of these events is the fact that it was APS' parent, Pinnacle West Capital Corporation ("PWCC") who decided how the PWEC generation assets were to be financed, and what the maturity dates should be for the financing mode that was selected.⁶ There is no suggestion in the record of this proceeding that APS had any role in that decision.⁷ Nor is there any suggestion that the Commission was consulted or its guidance sought as to the alternative financing scenarios PWCC and PWEC considered before making a final decision. Rather, it

⁴ Ironically, the Track "A" proceeding was instituted in part in response to APS' October, 2001 request for a variance from the Commission's competitive procurement rule, as set forth at A.A.C. R14-2-1606(B).

⁵ In reality, although not expressly acknowledged by APS, a second major component in PWCC's contemplated "Recovery Plan" is the anticipated filing by APS within the next few months of an application through which it will seek Commission authorization to rate-base, and perhaps actually acquire, PWEC's generation assets. This proposal is further discussed in Section III below.

⁶ The Commission Staff's Initial Brief specifically notes at page 3 that "PWCC chose the maturities on its own accord."

⁷ In fact, APS acknowledges in its Initial Brief that it would not have been appropriate to involve APS in such financing decision making. [See page 6, lines 7-10]

1 appears PWCC made the decision for its own financial gain, and with a view towards avoiding
2 “more expensive and restrictive project financing.” [APS Initial Brief, page 6, lines 4-7]
3
4 However, now that PWCC and PWEC apprehend difficulty in arranging for permanent financing
5 of these generation assets, they look to APS and its creditworthiness to “bail” them out, although
6 there is no evidence in the record to suggest PWCC ever intended to share the benefits of its
7 reduced interim financing costs with APS or its ratepayers.

8 The second event is the failure of APS (and its unregulated parent and generation
9 affiliate) to avail itself of the Commission’s invitation in Decision No. 65154 to file an
10 application seeking approval to acquire PWEC's generation assets.⁸ Such an application was to
11 be filed on or before September 15, 2002, if APS desired to pursue that course of action. Had it
12 elected to do so, that matter might have been resolved by now; and, perhaps an entirely different
13 scenario might have unfolded without a purported “liquidity crisis” Instead, APS (and, by
14 implication, its parent) opted to file the Application which is the subject of this proceeding on
15 September 16, 2002, thereby presenting the Commission with a “rather unique and unusual” set
16 of financing authorization requests, and the troubling questions which they raise “in a very gray
17 area.”
18
19

20 APS has offered no explanation for its failure to avail itself of the Commission’s
21 invitation to file an asset acquisition application by September 15, 2002. Nor, did it seek an
22 extension of the deadline for filing such an application. Moreover, no plausible basis for an
23 explanation of such failure(s) would appear to exist. It is very clear from the record in this
24 proceeding that APS has the financial capacity to issue additional bonds and thus raise the funds
25 by which it could have acquired PWEC’s generation assets, without the necessity of an
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28

1 accompanying rate increase. Thus, the fact that it could not file a rate increase request under the
2 1999 Settlement Agreement until this year did not represent either an impediment or a barrier to
3 APS filing an application last year for approval to acquire those assets.
4

5 Given the foregoing, it borders on arrogance for APS to belatedly request that the
6 Commission “fix” a perceived problem that is largely a result of the actions of APS’ unregulated
7 parent and generation affiliate, and the inaction of APS. This is particularly true where the
8 record is devoid of hard evidence that APS’ credit rating will in fact be downgraded if its
9 Application is denied. All that is in the record is the conjecture of APS’ witnesses, and
10 conjecture has no probative value or role in this setting.
11

12 III.

13 PWCC’s PROPOSED “RECOVERY PLAN” AND 14 THE PROVERBIAL “SLIPPERY SLOPE”

15 In both its evidentiary presentation and its Initial Brief, APS discusses PWCC’s proposed
16 “Recovery Plan” for restoring its financial integrity. The “Recovery Plan” is described as
17 consisting of four (4) components: (i) reduction of capital expenditures through the cancellation
18 of Redhawk Units 3 and 4; (ii) issuance of \$200 million in PWCC common equity; (iii)
19 generation of PWCC cash flow through acceleration of Sun Cor real estate sales; and (iv)
20 refinancing of PWCC/ PWEC’s Bridge Debt through financial assistance from APS. [See, e.g.
21 APS’ Initial Brief, page 5, lines 8-16; Ex. APS-1, pages 12-13; Tr. 90-93; Tr. 113; and Tr. 217-
22 218] In that regard, APS states that
23

24 “The authorizations requested in the [Financing]
25 Application are necessary to complete PWCC’s ‘Recovery
26 Plan’.” [APS Initial Brief; page 5, lines 14-16] [emphasis
27 added]
28

8 See Decision No. 65154 at page 33, Line. 27- page 34, Line. 6

1 In reality, that assertion is incorrect.

2 More specifically, a final and essential component in PWCC's "Recovery Plan" is the
3 contemplated filing by APS of an application "to ratebase the PWEC reliability assets in the
4 Company's upcoming general rate case." [See APS Initial Brief, page 17, lines 3-4] This filing
5 is not identified as an essential feature of PWCC's "Recovery Plan," but in reality it is
6 necessarily so.⁹ A four-year loan from APS will not solve PWCC's purported need to arrange
7 permanent financing for PWEC's generation assets. Yet, Condition No. 5 to the Commission
8 Staff's support for the proposed APS Loan is a four-year term limit on the loan, which APS is
9 willing to accept. Although that condition allows for the prospect of an extension of that term
10 with Commission approval, such approval cannot and should not be presumed at this time.

11 So, how do PWCC and APS overcome the financially inhibiting effect of this term
12 limitation? They do so by means of the contemplated rate-basing of PWEC's generation assets
13 well within that four-year time frame. APS endeavors to suggest that

14 "Approving the [financing] Application in no way
15 prejudices the Commission's ultimate rate-basing
16 determination regarding any or all of the PWEC Arizona
17 generation [assets]." [APS Initial Brief, page 17, lines 9-11]

18 However, that suggestion is disingenuous at best. This is because APS' (and PWCC's) plan
19 contains no "exit strategy." Stated differently, what will PWCC and APS do to address PWCC's
20 financial integrity needs four years from now, or sooner, if the Commission (i) grants APS'
21 currently pending Application in this proceeding, and (ii) subsequently denies APS' forthcoming
22 application for rate-basing of PWEC's generation assets?

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27
28 ⁹ In supporting approval of APS' Application, subject to APS' prompt filing of an application for rate-basing
authorization, the Residential Utility Consumer Office ("RUCO") has implicitly acknowledged this fact.

1 In reality, APS (and PWCC) are in fact seeking to position the Commission so that it will
2 have no alternative but to approve APS' forthcoming application for rate-basing treatment.
3 Otherwise, the Commission will be confronted with the prospect of having only temporarily and
4 partially addressed PWCC's asserted "liquidity crisis."
5

6 Thus, the Commission must carefully consider the full, long-term ramifications of what
7 APS has requested of it by its Application in this proceeding. Given the absence of an "exit
8 strategy" on the part of PWCC (and APS), the Commission is being asked to take that first step
9 upon the "slippery slope" which is of such concern to Sempra/SWPG. At least two potential
10 adverse consequences are foreseeable. First, in approving APS' financing application, the
11 Commission may effectively (albeit unintentionally) have positioned itself to subsequently
12 approve APS' forthcoming application to ratebase PWEC's generation assets. Second, incident
13 to such approval of rate-basing, the Commission may have substantially undercut its efforts to
14 facilitate the development of a viable competitive wholesale electric market in Arizona through
15 the Track "B" process. Either consequence would be incompatible with the "public interest."
16
17
18

19 IV.

20 APPLICABLE DECISION MAKING STANDARDS AND 21 APS' BURDEN OF PROOF

22 A. The Relevant Context of "Lawful Purpose."

23 A.R.S. §40-301(C) provides as follows:

24 "The Commission shall not make any order or
25 supplemental order granting any application as provided by
26 this article unless it finds that such issue is for lawful
27 purposes which are within the corporate powers of the
28 applicant, are compatible with the public interest, with
sound financial practices, and with the proper performance
by the applicant of service as a public service corporation

1 and will not impair its ability to perform that service.”
2 [emphasis added]

3 In its Initial Brief, APS contends

4 “There is no statutory limitation on the phrase ‘lawful
5 purpose’ in Title 40. Thus, this provision may be presumed
6 to mean what it says – that the Commission must find that
7 the purpose is one that is not unlawful.” [APS Initial Brief,
8 page 19, lines 5-7] [emphasis in original]

9 In making this argument, APS is endeavoring to broaden the factual context in which the
10 statutory phrase “lawful purpose” is to be applied. Unfortunately, for APS, the above-quoted
11 language of A.R.S. §40-301(C) does not support APS’ contention. To the contrary, the phrase “
12 for lawful purposes which are” provides that very statutory limitation which APS seeks to
13 escape.

14 More specifically, as Sempra/SWPG noted in Section III of their Initial Brief

15 “. . . the Commission ‘shall not make any order’ granting
16 any application filed pursuant to A.R.S. §40-301 *et. seq.*,
17 ‘unless it finds’ that the requested financial authorization
18 satisfied the standards prescribed in A.R.S. §40-301(C). In
19 each instance, the requested authorization must be for a
20 ‘lawful purpose’ which is also each of the following: (i) ‘. .
21 . within the corporate powers of the applicant’; ‘. . .
22 compatible with the public interest,’; (iii) ‘. . . compatible .
23 . . with sound financial practices’; (iv) ‘. . . compatible . . .
24 with the proper performance by the applicant of service as a
25 public service corporation’; and (v) ‘. . . will not impair its
26 ability to perform that service.’ If the Commission finds
27 that one or more of these statutory criteria have not been
28 satisfied, it cannot grant the Application pending before it.”
[Sempra/SWPG Initial Brief, page 6, lines 5-15] [emphasis
in original]

1 Accordingly, APS' assertion that

2
3 " . . . there is no legal prohibition on APS borrowing or
4 loaning money to an affiliate or any other party, provided
5 that the Commission approves such a transaction in the
6 case of an affiliate. . ." [APS Initial Brief, page 19, lines 9-
7 11]

8 is both misplaced and irrelevant for purposes of this proceeding. Rather, what is relevant is
9 whether the proposed borrowing and loaning by APS is for a "lawful purpose" directly related to
10 each of the five (5) decision making standards set forth in A.R.S. §40-301(C).
11

12 In that regard, Sempra/SWPG believe APS has not demonstrated the requisite
13 relationship as to each of the statutory criteria with clear and convincing evidence.
14

15 **B. Within the Corporate Powers**

16 In its Initial Brief, APS selectively quotes from its Articles of Incorporation as to the
17 purposes for which is organized, and concludes that it may transact

18 " . . . any or all lawful business for which corporations may
19 be incorporated under Chapter 1 to Title 10, Arizona
20 Revised Statutes. . . 'subject to any limitations or
21 requirements contained in the articles of incorporation. . .'"
22 [APS Initial Brief, page 19, lines 15-22]

23 What APS perhaps inadvertently overlooks is the fact that its own Articles of
24 Incorporation, restated as of May 25, 1988, contain such limiting language. More specifically,
25 the following language appears in Article Second immediately after the "any or all lawful
26 business" phrase upon which APS relies:

27 "The character of the business which the Corporation
28 intends actually to conduct in the State of Arizona on and
for the foreseeable period of after July 1, 1976 is that of a
public service corporation within the meaning of Section 2
of Article 15 of the Constitution of Arizona as in effect on
July 1, 1976." [emphasis added]

1 Thus, as Sempra/SWPG noted in their Initial Brief,

2
3 “... the broad ‘any or all’ language set forth in the first
4 ‘purposes’ paragraph, is modified by the qualifying
5 language of the second paragraph, which is quite specific
6 and limiting as to the intended purposes of the company
7 and the nature of its business, namely, that of a public
8 service corporation. [Sempra/SWPG Initial Brief, page 7,
9 lines 17-19]

10 In addition, Sempra/SWPG also demonstrated in their Initial Brief that language
11 contained in the Articles of Incorporation of APS’ corporate predecessor could not be relied
12 upon for two reasons. First, that language was specifically superseded by APS’ 1988 Restated
13 Articles of Incorporation. Second, the factual circumstances surrounding this proceeding would
14 not satisfy the requirements of that 1927 language, even if had not been superseded.
15 [Sempra/SWPG Initial Brief, page 7, line 21-page 8, line 11]

16 In their Initial Brief, Sempra/SWPG concluded that APS had not met its burden of
17 demonstrating that the requested authorizations would be for lawful purposes which are within
18 its corporate powers and intended corporate purposes. APS has done nothing in its Initial Brief
19 to demonstrate that that conclusion is in error. Nor has any other party who filed an Initial Brief.

20 **C. Compatible With the Public Interest.**

21 As noted at page 5 in Sempra/SWPG’s Initial Brief,

22 “... it is for the Commission to ultimately determine what
23 constitutes the ‘public interest’ in the context of A.R.S.
24 §40-301(C) and the circumstances surrounding this
25 proceeding. Similarly, it is the Commission which shall
26 decide whether APS has met its burden of proof that the
27 requested financing authorizations are “compatible with the
28 public interest’ in this instance.” [emphasis added]

29 In that regard, APS notes that the term “public interest” in this context has not been defined by
30 either the Arizona legislature or courts. Seeking as much latitude as possible with respect to

1 what may be considered in connection an application of that concept, APS cites two New
2 Hampshire cases in its Initial Brief. However, neither of those cases were decided under a
3 statute as specific and directive in nature and context as A.R.S. §40-301(C).¹⁰ Thus, they offer
4 the Commission no meaningful guidance in this instance.
5

6 Sempra/SWPG believe that there are two lines of inquiry which the Commission may
7 pursue incident to a determination of whether APS' requested financing authorizations are for a
8 lawful purpose compatible with the "public interest." First, the Commission may consider
9 whether the purposes underlying APS' proposed borrowing and lending, or, alternatively,
10 guarantee, are consistent with its purposes and responsibilities as a public service corporation.
11 Sempra/SWPG believe that they are not.
12

13 Second, the Commission may consider whether approval of APS' financing authorization
14 requests for the intended purposes entails a risk that the results would be inconsistent with other
15 "public interest" determinations previously made by the Commission. The Commission's
16

17 ¹⁰ In Appeal of Roger Easton, 480 A.2d 88 (NOH. 1984) the court cited the following statutory language in
18 connection with its review of the PUC's decision:

19 "RSA chapter 369 provides, in pertinent part: The proposed
20 issue and sale of securities will be approved by the
21 commission where it finds that the same is consistent with the
22 public good. Such approval shall extend to the amount of the
issue authorized and the purpose or purposes to which the
securities or the proceeds thereof are to be applied, and shall
be subject to such reasonable terms and conditions as the
commission may find to be necessary in the public interest. . ."

23 In Grafton County Electric Light & Power Co. v. State, 94 A. 193 (N.H. 1915) the court described the standard of
24 review of the PUC's actions as follows:

25 "The measure by which the matter is to be determined is
26 described by the Legislature as 'the public good.' Laws 1911,
27 c. 164, §13. This is equivalent to a declaration that the
28 proposed action must be one not forbidden by law, and that it
must be a thing reasonably to be permitted under all the
circumstances of the case."

Clearly, neither of these contains the specific statutory decision making criteria and directive set forth in A.R.S. §40-

1 determination that the development of a viable competitive wholesale electric market in Arizona
2 would be in the "public interest," as reflected in Decision No. 65154 and the currently pending
3 Track "B" proceeding, represents such a determination. As noted above in this Reply Brief, and
4 in their Initial Brief, Sempra/SWPG are concerned that any decision by the Commission in this
5 proceeding not have the effect of either (i) undercutting the Commission's efforts in the Track
6 "B" proceeding, or ii) prejudging APS' forthcoming application for authority to ratebase
7 PWEC's generation assets.
8

9 In its in Initial Brief, APS endeavors to assemble an array of reasons why approval of its
10 requests would be compatible with the public interest. Some of these relate to it and its role as a
11 public service corporation. Others do not; they relate only to its unregulated parent and
12 generation affiliate. Another alludes to the prospect of resolution of litigation arising from Track
13 "A" and Decision No. 65154, which has no bearing upon a determination to be made within the
14 context of A.R.S. §40-301(C). Finally, APS blandly concludes that approval of the loan to
15 PWEC "will not adversely affect competitive bidding in Track "B" without an iota of
16 explanation or evidentiary support.
17

18 Suffice it to say, for the reasons discussed above, Sempra/SWPG believe APS has not
19 satisfactorily discharged the probative burden required of it as to this statutory decision making
20 standard.
21

22 **D. Compatible with Sound Financial Practices.**

23 In the interest of brevity, Sempra/ SWPG incorporate herein by reference, the discussion
24 of this statutory decision making standard and the record in this proceeding as set forth in their
25 Initial Brief. [Sempra/SWPG Initial Brief, page 10, line 11- page 11, line 5] The discussion set
26 forth in APS' Initial Brief does not address the fundamental question of whether, for purposes of
27

28

301(C).

1 A.R.S. §40-301(C), it is sound financial practice for a public service corporation to lend money
2 or provide credit support to an unregulated parent or generation affiliate. Staff witness Thornton
3 testified that this was “a very gray area.” [Tr. 999, lines 1-2] APS has done nothing to dispel
4 that uncertainty.
5

6 **E. Compatible With Proper Performance of Service as A Public Service Corporation.**

7 As APS notes in its Initial Brief, there also is no judicial precedent in Arizona defining
8 this statutory decision making standard. Nor has the Arizona legislature done so. Against this
9 void, APS asserts the proposition that
10

11 “Clearly, the protection of APS’ creditworthiness should
12 PWCC be downgraded is compatible with such a purpose.”
[APS Initial Brief, page 21, lines 21-22]

13 In making this statement, APS cites the testimony of the Commission’s Staff witness Thornton.
14 However, APS’ reliance is misplaced in this regard.

15 More specifically, the following exchange occurred during the hearings between APS’
16 attorney and Staff witness Thornton:

17 “Q. Just as we talked about the sound financial practices,
18 would you agree that if APS believed that the instant
19 application were necessary to protect its own credit
20 rating, that it would be compatible with its
performance as public service corporation?

21 A. Yes, I would. [Tr. 1000, lines 6-11]”
[emphasis added]

22 What is relevant, however, for purposes of A.R.S. §40-301(C), is what the Commission believes
23 is compatible with sound financial practice by a public service corporation, not what APS
24 believes. Moreover, only a moment before the above-quoted exchange, the following exchange
25 had occurred between APS’ attorney and Staff witness Thornton:
26
27
28

1 "Q. . . . Do you think it would have been consistent with
2 sound financial principles for APS to have done
3 nothing about the liquidity situation at its parent
4 company?

5 A. Well, actually, we're in a very gray area here. It
6 would be hard to say one way or the other." [Tr. 998,
7 line 22- Tr. 999, line 2] [emphasis added]

8 This question and answer more closely encompasses the issue before the Commission under this
9 statutory criterion; and Mr. Thornton has indicated the resolution is not clear cut, as APS would
10 like to suggest. Rather, "we're in a very gray area here." The probative burden is on APS to
11 provide the requisite clarity, and it has failed to do so.

12 APS' second argument in support of its contention that this statutory criterion has been
13 satisfied is that approval of its Application preserves for the Commission the ability to consider
14 rate-basing PWEC's generation assets in the future. In Section III above, Sempra/SWPG have
15 discussed in detail the risks and problems associated with this contention, because of the absence
16 of an "exit strategy" in PWCC's Recovery Plan and the resulting "slippery slope" on which the
17 Commission might be placed by reason of approval of APS' currently pending Application.

18 More specifically, in this proceeding APS is requesting Commission authorization to
19 borrow \$500 million for the purpose of enabling PWCC and PWEC to replace a portion of the
20 Bridge Debt PWEC incurred in connection with construction of PWEC's generation assets. APS
21 has also announced in this proceeding its intent to file an application in the near future requesting
22 Commission authorization to rate-base (if not acquire) PWEC's generation assets. In that regard,
23 APS has argued that Commission approval of its pending request will preserve the
24 Commission's ability to consider APS' future rate-basing request. In order to approve APS'
25 pending request under the statutory decision making standard here in question, the Commission
26 must find that the purposes of the proposed borrowing and loan are "compatible with [APS']
27
28

proper performance of service as a public service corporation.” Given the “big picture” scenario that APS has disclosed, how does the Commission make such a finding in this proceeding without jeopardizing or compromising its ability to independently evaluate (and perhaps reject) APS’ rate-basing proposal in the future proceeding? That is both the dilemma it faces, and the beginning of the “slippery slope.”

F. Will Not Impair Ability to Properly Perform As a Public Service Corporation

In the interest of brevity, Sempra/ SWPG incorporate herein by reference the discussion of this decision making standard set forth at pages 12-13 of their Initial Brief. In its Initial Brief, APS devotes one sentence to a discussion of this standard, and two transcript citations. However, as Sempra/SWPG note in their Initial Brief, because of the fact that APS’ own Application acknowledges it may be required to secure the debt it proposes to incur “with a mortgage lien on all or a portion of the Company’s assets”

“ . . . APS is simply in no position at this time to demonstrate that approval of its Application might not impair its ability to properly perform its public service obligations at some future date by reason of such action.”
[Sempra/SWPG Initial Brief, page 12, lines 18-20]
[emphasis in original]

Accordingly, Sempra/SWPG submit APS has not satisfactorily discharged its probative burden as to this statutory decision making standard as well.

V.

CONCLUSION

If the Commission should conclude that APS’ Application should be granted as to the borrowing and lending alternative, then Sempra/SWPG believe that the Commission Staff’s proposed Conditions 1 through 7, represent a well-intentioned and reasonable attempt to improve upon the difficult situation APS and its unregulated parent have presented to the Commission.

1 However, for each and all of the reasons discussed in Sections II through IV above of this Reply
2 Brief, as well as those additional considerations raised in their Initial Brief, Sempra/SWPG
3 believe that the Commission should enter an Opinion and Order denying the financing
4 authorizations requested by APS for both policy and failure of proof reasons.
5

6 Further, in the event the Commission should decide to approve APS' Application, with
7 the Commission Staff's recommended conditions, Sempra/SWPG urge the Commission to
8 include in its Opinion and Order language designed to insure that the Commission's decision will
9 not have the effect, in any conceivable way, of (i) undercutting the Commission's efforts to
10 facilitate the development of a viable competitive wholesale electric market through the Track
11 "B" process or (ii) positioning the Commission to prejudice the resolution of issues not before its
12 relating to the possible acquisition and rate-basing by APS of PWEC's generation assets.
13

14 Respectfully submitted this 6th day of February, 2003.

15
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